

## Human Rights Council strengthening

### Breakout group 1: Methods of work, agenda and programme of work, and the review of mandates

#### Issues paper

There is a growing recognition that as the Human Rights Council approaches its twelfth anniversary there is a need to undertake an inclusive, cross regional and structured dialogue to review how States might strengthen the fulfilment of the Council's mandate and purpose, as set down in GA resolution 60/251. This includes discussions around how the work and effectiveness of the Council might be further enhanced in the future.

That does not mean root and branch reform based on a premise that the Council is fundamentally failing. It is not. Rather, it means pursuing evidence-based improvements in a number of specific areas where the experience of the past twelve years suggests the Council could do better. Examples of such areas include: 1) working methods; 2) the agenda and the programme of work; 3) the effective delivery of capacity-building and technical support; 4) membership – in particular supporting inclusivity and accessibility for a more diverse membership, and improved compliance with the principles and criteria set down in GA resolution 60/251; 5) support for domestic implementation; 6) strengthening coordination and communication between 'Geneva' and 'New York'; and 7) securing a shift in how the Council considers and deals with situations of human rights violations – from reaction to prevention.

Calls for, and debates around, Council reforms have steadily increased over the past two years. There now appears to be broad agreement on the need for a process of reflection and review, with a view to strengthening the efficiency and effectiveness of the body. Today, the key difference between States does not appear to be over *whether* there is a need to bring improvements to the work of the Council, but rather *how and when* to proceed with that effort and *what* improvements are needed.



## Methods of work, agenda and programme of work

Since the Council's establishment, there has been a significant increase in the breadth of the body's work and output. For example: this year the Council has adopted a record 113 resolutions and other texts (compared with, for example, 76 texts in 2008); the number of panel debates has already reached unsustainable levels (the March 2016 session alone saw the convening of 10 panels); the number of Special Procedures mandates now stands at 55 (79 mandate-holders); the number of side events per session regularly passes 150; and OHCHR is being asked to compile and submit an increasing number of reports (e.g. the Council considered 213 such reports in 2015).

These trends have important resource implications. For example, the large number of texts adopted in 2017 came with a total PBI of approximately 35 million US\$. At a perhaps more prosaic - but equally important - level, the Director-General of the United Nations Office at Geneva, Mr Michael Møller, has already warned the Council that the UN can no longer service the number of Council meetings being convened each year.

### **Methods of work**

These numbers are reflective of State and civil society enthusiasm for the Council and its work, but they also raise a number of important questions about the efficiency and effectiveness of the Council's methods of work. For example, can States meaningfully contribute to over 200 informal consultations per year; can they and NGOs read 80 reports ahead of each session; can States engage in a 'substantive interaction' with Special Procedures when they have only around 2 minutes per clustered interactive dialogue (so, in effect, less than a minute per mandate-holder); and do national policymakers really have the political will or the capacity to process and implement (where relevant) over one hundred resolutions per year as well as the increasing number of recommendations generated by the Council's mechanisms?

Beyond mere numbers, it is important to recall that improving efficiency should not be seen as an end in itself. Rather, it should be seen as a necessary part of wider efforts to build a Council that is more relevant, more effective, and better able to fulfil its mandate as set down in GA resolution 60/251. For example, with session time increasingly taken up by half-day (and sometimes full-day) panel debates, frequently repetitive national statements,



and ‘interactive’ dialogues with Special Procedures that are neither ‘interactive’ nor really a ‘dialogue;’ there is insufficient space on the Council’s agenda to undertake other important tasks including exchanging good practice on implementation, discussing capacity-building and technical assistance needs, and following up on earlier recommendations. Likewise, there is clearly an inverse relationship between the number of resolutions tabled at a given session, and the attention that delegations and NGOs can dedicate to individual informal consultations on those texts – thereby potentially reducing the quality of resolutions and possibly making consensus outcomes more difficult to achieve.

## Cooperation and dialogue

Efforts to strengthen the Council’s working methods should be premised on creating the conditions for improved cooperation and dialogue, in line with GA resolution 60/251.

In practice, this means (as set down in resolution 60/251) that the Council’s methods of work should provide space for, encourage and support cooperation and dialogue:

- On the promotion of technical assistance and capacity building, to be provided in consultation with and with the consent of Member States concerned.
- On the full implementation of human rights obligations undertaken by States, through sharing good practice, challenges and solutions.
- On the prevention of human rights violations and human rights crises.
- On thematic human rights issues and norm setting.
- With and between governments, regional organisations, national human rights institutions and civil society.

In principle, the methods of work of the Council are meant to provide the space and the opportunity for States, UN experts and civil society to engage in such dialogue and cooperation. With operative paragraph 12 of GA resolution 60/251, States decided that ‘the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results orientated, allow for subsequent follow-up discussions to recommendations and their implementation, and allow for substantive interaction with special procedures and mechanisms.’



Unfortunately, the contemporary reality of the Council, with its ever-widening and increasingly burdensome (especially for small delegations) agenda, is that there is less and less space and opportunity for meaningful dialogue or for inclusive discussions around State cooperation.

## Agenda and programme of work

The Council's agenda and the framework for its programme of work are set by the institution-building package (IBP). However, there is considerable flexibility as to exactly how an annual programme of work should be constructed, including how agenda items (and therefore general debates under those agenda items) may be distributed over the course of the year.

In constructing that programme of work and taking it forward (i.e. methods of work), the IBP underscores certain principles including, *inter alia*: transparency, pragmatism, predictability, inclusivity and flexibility (i.e. methods of work 'may ... be updated and adjusted over time.' At the time of the IB Package's adoption, proposals were considered for an annual programme of work. This was left unresolved and did not prove problematic, given the manageable workload during the Council's early years.

The IBP (part VII – rules of procedure) further says that the agenda and programme of work shall be adopted during an 'organizational meeting' held 'at the beginning of each Council year.' In setting its programme of work, the Council should consider 'approximate dates of consideration of items and the number of meetings to be allocated to each item.' Importantly, part VI (methods of work) of the IBP implicitly elaborates on this point by recognising the need for (in the context of managing the Council's workload) 'clustering of agenda items,' and the 'staggering the tabling of decisions and/or resolutions and consideration of action on agenda items/issues.'

During the five-year review, the Council further built on these themes (i.e. constructing a transparent and predictable programme of work – perhaps even multi-year programmes of work), by calling on the Bureau to 'establish a tentative yearly calendar for the thematic resolutions of the Human Rights Council' that would include reflection of sponsoring State decisions to biennialise or triennialise such resolutions.'



## Review, rationalisation, improvement of mandates (RRI)

At the time of the establishment of the Council in 2006, UN member States were already aware of the need to ensure the on-going relevance of mandates, in particular Special Procedures mandates, inherited from the Commission on Human Rights.

That is why the GA (with resolution 60/251) called on the new Council to 'assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure; the Council shall complete this review within one year after the holding of its first session.'

With this mandate in mind, the first President of the Council (and his Bureau) included the 'review, rationalisation and improvement' (RRI) of mandates – especially Special Procedures mandates – as a key part of the institution-building negotiations (that led to the adoption of the IBP). Unfortunately, States were not able to agree on the merger or discontinuation of any thematic mandates, and, although they did agree on criteria that should guide RRI decision making (e.g. 'every effort should be made to avoid duplication,') they did not agree on any mechanisms for conducting regular RRIs (i.e. where those criteria might be applied) – deciding only that 'the review, rationalization and improvement of each mandate would take place in the context of the negotiations of the relevant resolutions,' (i.e. at the moment of renewal).

In reality this means that all thematic Special Procedures mandates are automatically - by default - renewed every three years, often with little or no consideration of, or consultation on, the continued utility of the mandate in its present form. The net result is a situation in which, over the entire (almost 50 years) history of the Special Procedures mechanism, only once has a thematic mandate ever been 'discontinued' - with the merger of the Independent Expert on structural adjustment policies and the Special Rapporteur on the effects of foreign debt, in 2000. Even then, it is notable that the mandates were not dropped but combined. At the same time, and continuing to the present day, more and more mandates continue to be added.



## Questions

1. Has the time now come for the idea of an annual programme of work to be revisited? Can the annual Council organisational meeting be reconceptualised, within the framework set by the IBP, as an annual programming, planning and pledging meeting? Could there be agreement, as a possible first step, to cluster and/or stagger general debates?
2. How to create space in the Council's programme of work for cooperation and genuine dialogue, on issues such as the promotion of technical assistance and capacity building; the implementation of human rights obligations undertaken by States, through sharing good practice, challenges and solutions; and the prevention of human rights violations and crises?
3. How to reduce the number and duration of panels? Reduce their duration from three hours to two? Set a limit or quota for the number of panels per Council session (which could then be reflected in the calendar of initiatives and annual programme of work – to promote transparency, fairness and predictability)? How to standardise all panels – so that all issues are treated fairly and equally (i.e. no more full-day annual panels?)
4. Given that different States and groups of States are attached to different mandates and issues, how to build and maintain a regularised RRI process/mechanism, in line with the principles set down by the IBP?
5. What practical steps could we take to leverage new technology to strengthen the efficiency, transparency, predictability and inclusivity of the Council?

